" His (Suhaime's) movements were checked by Insp. Lim Chye Heng who said he was perfectly satisfied as a result of his investigations which took him to Changi that the accused ...

(there is no doubt a mistake here, the Judge meant to say 'Suhaime')

" was at Changi at the time this murder was committed and had nothing whatever to do with the present case. If you accept that evidence, members of the Jury, that disposes of the question once and for all as to whether Suhaime bin Haji Serat committed this murder."

The effect of the summing-up was that the Jury was directed that if they accepted this inadmissible evidence of Insp. Lim Chye Heng, then the suggestion of the defence that Suhaime was the murderer had been disproved. In our view this was clearly a misdirection.

We cannot say that the Jury was not influenced by this inadmissible evidence and by this misdirection when they considered the other evidence against the appellant. We are of the opinion that in the special circumstances of this case the inadmissible evidence and the misdirection had gravely prejudiced the fair trial of the appellant.

The case against the appellant was based on circumstantial evidence and there were many unsatisfactory features in this case. To mention a few, first there was uncertainty in the medical evidence as to when the deceased died. It was possible on the medical evidence for the Jury to find that the deceased died after 9.30 a.m. and if that was so, on the evidence of the prosecution that the appellant was from 9.30 a.m. until 11 a.m. on the 16th April, 1958 in the company of one of the prosecution witnesses Rudahair binte Sanivan, the appellant could not have committed this crime. Secondly, the trial Judge failed to refer to the defence put forward at the trial that in view of the number of injuries inflicted on the deceased, the position of such injuries, the height of the appellant in relation to the height of the bed in which the deceased was found, and the medical evidence called by the defence, the appellant could not have committed the murder. Thirdly, the trial Judge failed to direct the Jury correctly regarding the cuts on the appellant's finger. The appellant maintained that the cuts were caused when she was opening a tin and her evidence was corroborated by a medical witness who said that the cuts could have been caused by the edge of a tin. The trial Judge in his summing-up however incorrectly stated "there is no evidence as to how she came by them (the cuts)" and continued "or whether they were caused during the stabbing."

In view of the inadmissible evidence and the misdirection and the many other unsatisfactory features of this case we were of the opinion that it would be unsafe to allow the conviction to stand and we allowed the appeal and quashed the conviction.

Appeal allowed, conviction quashed.

Solicitors: *Donaldson & Burkinshaw.*

SERVICES LTD. v. WONG LIANG TOON & ORS.

[O.C.J. (Chua J.) November 4, 1958]

[Singapore — Suit No. 1482 of 1956]

Landlord and Tenant — Control of Rent Ordinance (Cap. 242), s. 15(1)(k) — Demolishing premises for the purpose of rebuilding in the interest of public health — General Improvement Plan and Master Plan — Words "necessary" and "essential" — Meaning of

This was an action for the possession of premises Nos. 221 and 223 Victoria Street. The plaintiffs were the owners, the first defendant was the tenant and the 2nd defendants were the sub-tenants.

The plaintiffs' case was that the demolition was necessary in the interest of town improvement and that Victoria Street was accepted to be a major traffic route and the site of these premises was in a local shopping area. It was emphasised that if this development takes place a 24 ft. service road would be provided at the rear which would enable goods to be loaded and unloaded at the back of the premises and this would in some measure relieve the traffic congestion in Victoria Street. Mr. Meyer, the Planner of the Singapore Improvement Trust said in his evidence that there has long been a scheme to widen Victoria Street and the new buildings erected in Victoria Street have already been set back for this purpose. The plaintiffs in this case would have to give up part of the land in front for the widening of Victoria Street. The Planner informed the Court that the proposed development of the plaintiffs complies with the General Improvement Plan and the Master Plan.

The case for the defendant was firstly that there was no intention on the part of the plaintiff to rebuild the house and secondly that section 15(1)(k) was concerned not with rebuilding but whether demolition was necessary for the town improvement and that the word "necessary" means "essential." It was contended that the demolition was not essential in this case.

Held: (1) the General Improvement Plan is the existing statutory town planning in Singapore while the Master Plan had not at the date of the hearing become part of Singapore town planning. This proposed development will clearly be town improvement within the meaning of paragraph (k) of sub-section (1) of section 15;

(2) the plaintiffs have established both as to the facts and as to the law that these premises should be demolished in the interest of the town improvement.

Cases referred to:—

(1) *Koh Ngee Cheng v. Chop Siang Huat,* (1955) M.L.J. 17.

(2) *Services Ltd. v. Chop Teck Guan* Suit No. 1780 of 1954 – unreported.

(3) *Kwek Kim Hoc v. Ong Boon Siong,* (1954) M.L.J. 253.

ACTION for possession.

C. E. N. Arkell for the plaintiff.

K. K. Bezboruah for the 1st defendant.

Denis Murphy for the 2nd defendant.

Chua J.: This is an action for the possession of premises Nos. 221 & 223 Victoria Street. The plaintiffs are the owners, the first defendant is the tenant and the 2nd defendants are the sub-tenants.

At the hearing the plaintiffs led evidence seeking to recover possession on two grounds namely:—

(1) that they intend to demolish the premises for the purpose of rebuilding and that such demolition is necessary in the interests of public health and/or town improvement within the meaning of those words as used in section 15(1)(k) of the Control of Rent Ordinance (Cap. 242).

(2) that part of these premises consist of building of a temporary character and the sites are required by them for the erection of a building of a permanent character for which plans have been approved by the local authority (section 15(1)(i).

The evidence which the plaintiffs adduced in support of their contention that demolition is necessary in the interests of public health was that these premises are at least 50 years old and they do not comply with the present City Council By-laws governing buildings in that some of the doors and windows are too small and the rooms are not well ventilated. Evidence was also brought to show there is no sanitation at No. 223 and that the sanitation in No. 221 is very primitive and that the latrine opens into the kitchen and there is a great risk of contamination of food. The defendants on the other hand maintain that premises No. 223 is perfectly habitable and that the building need not be demolished in order to comply with the present requirements of the By-laws as regards size of windows and doors and size of rooms. They also say that if the plaintiffs put in modern sanitation, as they had been required to do so by the City Council, that would end the sanitation problem. On the evidence before me I am unable to say that the demolition of these premises is necessary in the interests of public health.

The evidence adduced by the plaintiffs on the issue whether the demolition is necessary in the interests of town improvement was that Victoria Street is accepted to be a major traffic route and the site of these premises is in a local shopping area. It is emphasised that if this development takes place a 24 ft. service road would be provided at the rear which would enable goods to be loaded and unloaded at the back of the premises and this would in some measure relieve the traffic congestion in Victoria Street. Mr. Meyer the Planner of the Singapore Improvement Trust says that there has long been a scheme to widen Victoria Street and the new buildings erected in Victoria Street have already been set back for this purpose. The plaintiffs in this case would have to give up part of the land in front for the widening of Victoria Street. The Planner informs the Court that the proposed development of the plaintiffs complies with the General Improvement Plan and the Master Plan. The General Improvement Plan is the existing statutory town planning in Singapore while the Master Plan has not at the date of the hearing become part of Singapore town planning. This proposed development will clearly in my view be town improvement within the meanings of para (k) of sub-section (1) of section 15.

It is argued by the defendants firstly that there is no intention on the part of the plaintiffs to rebuild. I need only say that there is ample evidence to satisfy me that the plaintiffs intend to demolish and rebuild. Secondly, that section 15(1)(k) is concerned not with rebuilding but whether demolition is necessary for town improvement and that the word "necessary" means "essential." It is argued that demolition is not essential in this case.

In the case of *Koh Ngee Cheng v. Chop Siang Huat,* (1) Knight J. interpreted the expression "necessary" in section 15(1)(k) as "something which is required." In the course of his judgment the learned Judge said (at p. 18):—

"..... the word "necessary" has many shades of meaning and in its everyday use surely it simply means something which is required. The word "essential" goes further than this and had the Legislature intended that the Court must be satisfied that the demolition of a building was "essential" in the interests of public health or town improvement, how very easy it would have been to say so."

In the case of *Services Ltd. v. Chop Teck Guan and eleven others* (2) Whyatt, C.J. in the course of his oral judgment said:—

" Fortunately I can obtain some guidance as regards the expression "necessary" from the judgment of Mr. Justice Knight in a very recent case where he interpreted the expression as meaning "essential" and something that was required in the interests of public health or town improvement. It seems to me it is correct to interpret this particular provision (section 15(1)(k)) as providing that if at the present time these premises are sub-standard from the point of view of public health or from the point of view of town planning and lay out and will remain sub-standard and unless and until some alteration such as is suggested is made, then the alteration should be made in order to bring the property up to a proper standard."

There is no doubt that the learned Chief Justice made a mistake when he said in his oral judgment that Knight J. interpreted the expression "necessary" as meaning "essential."

I respectfully agree with the interpretation placed on the word "necessary" in section 15 (1)(k) by Knight J. and in my opinion the plaintiffs have established both as to the facts and as to the law that these premises should be demolished in the interests of town improvement.

It is further argued by the defendants that where the landlord seeks to recover possession under section 15(1)(k) there must be evidence of a scheme made or approved by a local authority affecting the site in relation to other sites. On this point the defendants relied on the case of *Kwek Kim Hoc v. Ong Boon Siong,* [3] where Taylor J. said (at p. 254):—

" In one sense any replacement of a poor building by a better one may be thought an improvement to the town, but in this context the express conveys the idea of town planning. There need not be a general town plan. It might be no more than a building line for one street but there must be a scheme, made or approved by a local authority, affecting the site in relation to other sites."

It is contended by the plaintiffs that the judgment of Taylor J. on this point has not been followed in a number of subsequent cases. It is not necessary for me to decide whether I should or should not follow the judgment of Taylor J. as in this case there is evidence before me that there is a scheme to widen Victoria Street and to provide a 24 ft. service road which affects other sites in that area.

As regards the second ground of the claim for possession namely that part of these buildings are of a temporary character and the site is required for the erection of new buildings, the evidence of the plaintiffs do not satisfy me that part of the buildings is of a temporary character.

In the result there must be judgment for the plaintiffs for possession and *mesne* profits at the rate of $170 per month.

Judgment for the plaintiffs.

Solicitors: *Drew & Napier; K. K. Bezboruah; Murphy, Dunbar & Chung.*

SERANGOON GARDEN ESTATE LTD. v. MARIAN CHYE

[A.C.J. (Chua J.) July 25, 1958]

[Singapore — District Court Appeal No. 13 of 1957]

Contract — Building Contract signed by parties for sale of land and erecting a house — "Special agreement" for installation of Water & Electricity main — Money paid in advance — No misrepresentation — Whether money paid under mistake of law or mistake of fact.

This was an appeal against the judgment of a District Judge who gave judgment for the respondent in the sum of $62.22. The facts were shortly as follows: On or about February 4, 1955 the respondent signed an agreement with the appellants whereby the appellant agreed to sell to the respondent a piece of land and to erect thereon for the respondent a house on the terms and conditions set out in the agreement. At the same time the respondent signed a form (referred to by the appellants as a "special agreement") consenting to a suggestion that the appellants should apply to the City Council for the water and electricity mains to be connected to the house and should pay to the City Council on the respondent's behalf the fees for such connection. On March 11, 1955 at the request of the appellants the respondent deposited with them the sum of $150 to meet the fees payable for the connection to the City Council mains. Subsequently when the respondent received a letter dated July 15, 1955 from the appellants she observed that the sum of $62.22 was shown as having been appropriated to the fee for connection to the City Council water mains.

The respondent brought an action in the District Court claiming the return of the $62.22 from the appellants contending that by the agreement of February 4, 1955 the fee for connection to the City Council water mains was to be borne by the appellants and that the payment to the appellants had been made under a mistake of fact.

The appellants contended before the District Court (a) that the agreement did not provide for the connection of the sanitary fittings of the house to the City Council mains; (b) that the money was paid under a mistake of law; (c) that alternatively the money was paid as a result of a special agreement between the parties.

The learned District Judge held that on the true construction of the agreement the liability for the connection fee laid with the appellants and further held that the money paid by the plaintiff was paid under a mistake of fact and rejected the defence that the money had been paid under the special agreement.